

**RITA I. HUTCHISON**  
Claimant

**SSC SERVICE SOLUTIONS**  
Respondent

**CHUBB GROUP OF INSURANCE COMPANIES**  
Insurance Carrier

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## ORDER

## ISSUES

- (1) Did claimant suffer accidental injury on the date alleged?
- (2) Did claimant's accidental injury arise out of and in the course of her employment?

Claimant alleges accidental injury on December 11, 1999, when, while working as a cleaner for respondent in the West Ridge Mall, she fell on the escalator. Respondent acknowledges claimant advised her supervisor, Grady Jackson, within one or two days of the accident that she fell. Mr. Jackson testified that claimant showed him a scrape on her elbow, although he did not recall whether it was the right or left elbow.

Respondent's objection extends more to the extent of the injury alleged by claimant, rather than the fact that claimant suffered an accident. Claimant testified that, when she fell down the escalator, she fell approximately 37 feet, tumbling sideways all the way to the bottom of the escalator. Claimant acknowledged that there were people on the escalator below her, but somehow she managed to not strike any of those people on her way down. Respondent contends that claimant's description is impossible and unbelievable and that claimant did not tumble down the escalator but merely fell down and suffered only a small scrape on her elbow. Claimant alleges she suffers migraine headaches, blackouts spells, low back pain, and elbow and wrist pain.

Claimant first sought medical treatment from Kurt R. Knappenberger, M.D., an orthopedic surgeon, on February 16, 2000, over two months after the accident. Dr. Knappenberger released her that same day, with no treatment recommendations. Claimant did not again seek medical treatment until April 27, 2000, when she obtained five chiropractic treatments with Troy Counselman, D.C. Claimant was then released by Dr. Counselman, having shown no improvement.

Respondent contends that claimant's story is less than credible, as the first medical treatment provided by Dr. Knappenberger occurred approximately two weeks after claimant quit her employment with respondent. This termination of employment occurred after claimant had been disciplined on two separate occasions and had been written up for employment violations. Respondent questions claimant's motivation.

K.S.A. 1999 Supp. 44-534a and K.S.A. 1999 Supp. 44-551 limit a party's right to appeal from preliminary hearings. Respondent does not contend that the Administrative Law Judge exceeded his jurisdiction in ordering benefits, but rather contends that claimant failed to prove that she suffered accidental injury arising out of and in the course of her employment, both appealable issues under K.S.A. 1999 Supp. 44-534a. However, a review of the record fails to support respondent's contention that claimant did not suffer accidental injury which arose out of and in the course of her employment. In fact, respondent's supervisor, Grady Jackson, admitted that claimant not only advised him of a fall on the escalator, but also showed him a scrape on her elbow.

Respondent's objections in this instance go more to the nature and extent of claimant's alleged injury. While respondent's supervisor admits to seeing a small scrape on the elbow, there is no mention in the record of claimant's head, low back or wrist during the time she was employed with respondent. In addition, claimant testified at a discovery deposition approximately one week prior to the preliminary hearing. During that discovery deposition, claimant failed to mention her wrist pain. In addition, while being treated by Dr. Counselman, claimant failed to mention the elbow or the wrist. The only treatment provided by Dr. Counselman dealt with claimant's back, involving the cervical, thoracic and lumbar regions.

The Appeals Board acknowledges conflicts in claimant's testimony, in particular, the description of the accident and the extent of injury claimant alleges. However, respondent does acknowledge through its supervisor that claimant suffered some type of fall and some type of injury to her elbow on December 11, 1999.

The Appeals Board, therefore, finds that claimant has proven accidental injury arising out of and in the course of her employment, with the only dispute at this time centering around the nature and extent of that injury.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Brad E. Avery dated June 1, 2000, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 2000.

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BOARD MEMBER

c: Bruce A. Brumley, Topeka, KS  
Jeff S. Bloskey, Overland Park, KS  
Brad E. Avery, Administrative Law Judge  
Philip S. Harness, Director